आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009
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निवन्धित पावती डाक द्वरा/By R.P.A.D

फा.सं./F.No. **V.30/15-195/OA/2020-Denovo** आदेश की नारीख़/Date of Order:- 24.12.2021

जारी करने की नारीख़/Date of Issue :- 24.12.2021

DIN: 20211264WT000000F6F9

द्वारा पारित/Passed by:- आर गुलजार वेगम */R. GULZAR BEGUM*

संयुक्त आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 37/JC/GB/2021-22

जिस व्यक्ति)यों (को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्रामि मे) 60 माठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले मे करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषयः- कारण बताओ सूचना/ Show Cause Notice **F. No. V.30/15-04/OA/2017 dated 27.02.2017** issued to M/s Astra Life Care(India) Pvt. Ltd.(100% EOU) situated at Plot No. 57/P, Sarkhej Bavla Highway, Taluka Bavla, Ahmedabad.

BRIEF FACTS OF THE CASE

This order is passed on the basis of Order-in-Appeal No.AHM-EXCUS-003-APP-25 to 26-2020-21 dated 21.09.2020/09.10.2020 passed by the Commissioner (Appeals), Central Tax, Ahmedabad wherein Appeal filed against OIO No.08/ADC/2019-20 MLM dated 14.11.2019 in the case of M/s.Astra Lifecare (I) Pvt.Ltd & M/s.Mohinderasingh Faluba Rana, issued by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North which was remanded back to the adjudicating authority.

2. M/s. Astra Life Care (India) Pvt. Ltd (100% EOU), Plot No.57/P, Sarkhej Bavla Highway, Taluka Bavla, Ahmedabad (hereinafter referred to as 'the said assessee'), are engaged in the manufacturing and clearance of Pharmaceuticals Products (falling under chapter no.30 of the Central Excise Tariff Act,1985) and holding Central Excise Registration No.AAECA6553DXM001 and also engaged in trading of Pharmaceutical products, which are exempted services. The said premises of the said assessee was searched by the Preventive Wing of the Department on 20.07.2016 and found that they were not maintaining separate accounts for receipt of common input services used for the manufacturing of dutiable pharmaceutical products as well as for providing exempted service i.e. trading of goods as required under the provisions of Rule 6(3) of Cenvat Credit Rules, 2004. The search revealed that they have also claimed the refund of unutilized Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004 for the period from 2012-13 to 2016-17.

3. During the course of investigation, it was found that the said assessee was engaged in the trading activities of pharmaceutical products which was never declared to the department. The storing & clearing of trading goods as well as the manufacturing of Pharmaceutical products was being done from their factory premises, though in their books of accounts, they had declared the address of trading business from their Corporate office which had no facilities to store such goods. The details of the trading activity during the period 2012-13 to 2016-17 (up to 30.6.2016) was taken from their balance sheet and in terms of Rule 6(3) of the CCR,2004, they were required to reverse Cenvat credit of Rs.1,16,67,599/-. It was also found that the said assessee had failed to reverse the Cenvat credit of duty paid on inputs which later expired and were not used in or in relation to the manufacture of finished goods the said assessee was required to pay Rs.52,301/- along with interest.

4. During the course of investigation, a statement of Shri Mahendrasinh Fulubha Rana, Director of the said firm, was recorded on 20.07.2016 and 22.12.2016 under Section 14 of the Central Excise Act, 1944 wherein he admitted the above offence and willingly reversed Rs.1,16,67,599/- & Rs.52,301/- by way of reverse entry No.464 & entry No.465 both dated 20.07.2016 of Cenvat credit register. Accordingly, show cause notice dated 27.02.2017 was issued to the said assessee asking them to show cause to the Joint Commissioner of Central Excise, Ahmedabad-II, having office at 1st Floor, Custom House, Navrangpura, Ahmedabad - 380009, as to why:-

Rs.1,16,67,599/-(Rupees One Crore Sixteen Lakh Sixty Seven thousand Five Hundred Ninety Nine Only) Cenvat Credit which were availed by the said assessee on trading goods and were required to be reversed as prescribed under Rule 6(3) of Cenvat Credit Rules, 2004 2012-13 to 2016-17 (up to 30.06.2016)

should not be demanded and recovered under Section 11A (4) of the C. Ex. Act, 1944 read with rule 14 of Cenvat Credit Rules, 2004; The Cenvat Credit of Rs. 1,16,67,599/- (Rupees One Crore Sixteen Lakh Sixty Seven thousand Five Hundred Ninety Nine Only) reversed vide entry No. 464 dated 20.07.2016 in their Cenvat Credit Account (RG-23 Part II) without any protest by M/s. Astra Life care (India) Pvt. Ltd. (100 % EOU), Plot No. 57/P, Sarkhej Bavla Highway, taluka Bavla, Ahmedabad should not be adjusted against the total duty demanded.

b) Rs.52,301/- of Cenvat Credit of duty paid on inputs which was later on expired and not used in or in relation to the manufacture of finished goods, were required to be reversed as prescribed under Cenvat Credit Rules, 2004. The Cenvat Credit of Rs. 52,301 reversed vide entry No. 465 of Cenvat Credit register (RG 23A part Ii) without any protest by M/s. Astra Life care (India) Pvt. Ltd. (100 % EOU), Plot No. 57/P, Sarkhej Bavla Highway, Taluka Bavla, Ahmedabad should not be adjusted against the total duty demanded.

c) Interest on amount (a) & (b) above should not be recovered from them under Section 11AA of the Central Excise Act, 1944 read with Rule 14 (2) of Cenvat Credit Rules, 2004 on the above Central Excise duty liability;

d) Penalty in terms of the provisions of 11AC (C) of the Central Excise Act, 1944 read with Rule 15 (2) of Cenvat Credit Rules, 2004 should not be imposed upon them;

e) Shri Mahendrasinh Fulubha Rana, Director of M/s. Astra Life care (India) Pvt. Ltd. (100 % EOU), Plot No. 57/P, Sarkhej Bavla Highway, Taiuka Bavla, Ahmedabad was asked to Show Cause to the Joint Commissioner, Central Excise, Ahmedabad-ll as to why penalty should not be imposed on him u under Rule 26 of Central Excise Rules, 2002;

DEFENCE REPLY

5. The said assessee, vide their letter dated 03.04.2017, filed their reply to Show Cause Notice wherein they stated that;

> They have been maintaining separate accounts for the inputs received on which cenvat credit is taken and are used in the manufacture of excisable goods. Cenvat credit on the inputs which are to be used for trading activity is not taken and these inputs are accounted for separately in the books of accounts. (Copy of RG-23-A-Pt.I & Pt.II for specimen period submitted). Hence condition of Rule 6(1) and 6(2) of CCR, 2004 are fulfilled and are not required to reverse any credit.

> As regards input services are concerned, they are not maintaining separate account for input services used in excisable goods and trading of goods (non taxable or exempted service). Therefore option-3 of Rule 6(3) is applicable and are required to reverse Cenvat credit proportionately.

> As per said sub clause(iii) of Rule 6(3) if a manufacturer maintains separate accounts and inventory for inputs, cenvat credit on inputs can be taken in terms of (ii) and/or (iv) of clause (a) to Rule 6(2) of the said Rules. As per Rule 6(3) as amended by Notfn.No.3/2011-CF(NT) dated 01.03.2.011 w.e.f. 1.4.2011 manufacturer opting not to maintain separate accounts, shall follow any one of the options, wherein under Option-1, there is provision to pay amount equal to 6% or 7% of the value of the exempted goods. They claim in their case, they have maintained separate accounts for inputs hence this option is not applicable to them and the department has also wrongly applied this option and demanded reversal of cenvat credit. As per Option-3 they have to pay an amount as determined under sub-rule (3A) in respect of input services. They also stated that they have been filing quarterly refund claims of accumulated cenvat credit and department has been issuing show cause notice for each quarter and the department has never raised this issue about reversal of proportionate cenvat credit.

> Further, at the material point of time, the Director was not aware about the correct position so he did not counter the officers. In fact, they are maintaining separate records for input credit so the credit required to be reversed would be only to the extent of service tax credit taken on input services and not on the inputs. Therefore, the entire exercise of the department in demanding reversal or cenvat credit on the basis of formula given for determining the value and calculating 6% or 7% of such value is erroneous as the same is applicable only when the manufacturer has not maintained separate accounts for inputs. Thus formula of demanding reversal @ 6% or 7% is therefore arbitrary, erroneous and baseless being contrary to the facts and therefore the entire demand of Rs.1,16,67,599/- is required to be quashed.

> They have never done any trading of the inputs which are received in their factory. All the inputs received in their factory are used in the manufacture of finished goods which are then exported. R.6. 23A Part - II register for the period 01st April 2016 to 31st July 2016 is attached as Annexure - "A" which shows inward of raw material only and that is used for manufacturing. That means it indicates that they maintained separate account for inputs used for manufacturing and separate account for trading. They submit copies of ER-2 for the period April, 2016 to July, 2016 in Annexure-B. The finished goods which they manufacture are cleared on payment of duty for export. Similar goods were purchased from local market and traded. But the accounts for such goods are kept separately. Therefore, the admission of their Director reproduced in para 4.5 of the show cause notice is factually incorrect as it refers to "inputs" whereas, they have not done any trading of inputs. If they had not maintained separate account for inputs which they used in the manufacture of excisable goods, the department would have sought reversal of such Cenvat credit availed and commonly used in manufactured finished goods and traded goods also, but there is no such allegation in the show cause notice. They placed reliance on the decision of the Honorable Tribunal passed in the case of Mercedes Benz (India) Pvt. Ltd reported in 2015 (40) STR 0381 (Tri-Mum) which support their contention that Rule 6(3A) sub-clause (ii) was applicable when the separate account is not maintained for common input services

> As regards the demand of Rs.52,301/- they would like to know which statutory or private records are verified by the officers to allege that they have destroyed the inputs without taking permission of the department. Besides, a look at Annexure- B would show that the title of the said Annexure states "Duty calculation of expired materials for last 3 years" and the said search in the factory premises was on 20.07.2016 so last three years means upto 20.07.2013 period should be covered, whereas, column relating to GRN No. & Date would show that certain entries of 2011, 2012 and April, 2013 are also covered. This shows that the Annexure is incorrect. It would also be seen from these columns that even GRN dated 15.07.2016 is also taken to show that inputs received under this GRN had expired. This entry is just 5 days prior to visit: of the officers and there is no such material which would expire in 5 days and entire quantity received under the invoice is shown to have been destroyed. Perhaps it would have been a case of having received some low quality material, for which they would have returned entire quantity to the supplier and not taken any credit. Merely Director of the company confessing in the statement that a particular amount of cenvat credit is reversible on the inputs which could not be used for manufacture of finished goods as had expired is not sufficient evidence to make allegations and demand duty. Annexure-C to the show cause notice would also show that there is no document being relied upon by the department. Statement recorded under Section 14 of the Central Excise Act, 1944 is also not sufficient evidence to prove the

allegations unless it is corroborated by the documentary evidence. The OIOs of refund taken by them in the past years is contrary to the evidence which shows that department was aware that they are taking cenvat credit on various input services. Statement of Director was required to be supported by the department with some documentary evidence. Therefore the said demand is not sustainable in the eyes of law as being unsubstantiated with documentary evidence.

> The entries at 1 and 3 are for the goods received beyond five years period of issuance of show cause notice and the cenvat credit on these entries cannot be demanded even in the present show cause notice invoking extended period. Besides, that the entire demand is time barred for the reason that facts are not suppressed from the department. The trading activities being done are reflected in Profit & Loss Account, Trading Account and Balance Sheet. The central excise officers and CERA officers have audited their records on more than one occasion in past five years. Copies of Department Audit Reports attached in Annexure - "C". It is a well known fact that whenever any audit is conducted, the Balance sheet is the primary document required to be seen and the trading activity mentioned in the balance sheet could not have escaped the site of the officers. Para 8.1 of the show cause notice shows that sales figures are taken from Balance Sheet, so where is the suppression. For that matter, even the inputs expired and destroyed would not escape the officers. Therefore, the entire demand is time barred.

> They placed reliance on following decisions:

1) SDL Auto Pvt. Ltd. -2013 (294) ELT 0577 (Tri-Del)
2) *Continental Foundation Jt. Venture* - 2007 (216) LLL I-77 (S.C.)
3) *Jaiprakash Industries Ltd.* -2002 (146) E.L.T. 481 (S.C.)
4) *Pushpam Pharmaceuticals Company*-1995 (78) E.LJ\ 401 (S.C.);
5) *Chemphar Drugs & Liniments* -1989 (40)JCLI. 276 (S.C.)
6) Rohit: Industries Limited -2009 (242) ELT 0240 (Tri - Mum)
7) *GopaiZarda Udyogv.* CCE-2005 (188) ECU. 251
8) oi' *Cosmic Dve Chemical* -1995 (75) E.L.T. 7211.13.4.
9) Primella Sanitary Products Pvt. Ltd.- 2005 (184) E.L.T. 117
10) *Anand Nishikawa Co. Ltd.* v. *CCE-2005* (188) Eli 146
11) *T.N.* Dadha Pharmaceuticals v. *2003 (152) E.L.T. 251*

> In view of the above submissions and case laws, they also requested for cross examination of Shri A.S. Kundu, Superintendent who had investigated the case.

> Regarding interest, they submitted that interest and penalty proposals in the show cause notice are consequential to demand as the demand is entirely required to be set aside.,

Regarding proposal to impose penalty on Shri M.F. Rana, Director of the firm under Rule 26 of the Central Excise Rules, 2002, they submitted that first and foremost the entire demand is time barred, secondly on merits also Rs.1,16,67,599/- is not legally sustainable as incorrect formula has been adopted by the department. Thirdly, the show cause notice does not specify as to how Shri Rana has rendered himself liable for penalty under the said Rule. By using terminology of the Rule, the offence cannot be proved. The department has failed to bring on record any act, omission or commissioning of any offence conducted by Shri Rana which shall render him liable for the said penalty. Hence, the proposal is required to be dropped forthwith. They placed reliance on following decisions:-

a) Nashik Strips Pvt. Ltd. - 2010 (256) ELT 0307 (Tri-Mum),
b) V.K. Tuisian -2015 (329) ELT 0810 (Tri-Del).
c) Deepak Minda -2015 (317) ELT 588 (Tri-Del).

d) Gurmeet Singh-2014 (312) ELT 0689 (Tri-Del).

> They also requested for personal hearing on the main merits of the show cause notice and reserve their right to file final defence reply after incorporating the depositions made by the I.O.

6. After due process of personal hearing, the case was adjudicated by the then Additional Commissioner, who vide OIO No.08/ADC/2017RMG dated 14.11.2017 passed the following orders-

a) Confirmed the demand amounting to Rs. 1,16,67,599/- (Rupees One Crore Sixteen Lakh Sixty Seven Thousand Five Hundred Ninety Nine Only) provisions of Section 11A(4) of the CEA, 1944. The Cenvat Credit of Rs. 1,16,67,599/- reversed by M/s. Astra Life Care (India) Pvt. Ltd is ordered to be appropriated against the demand;

b) Confirmed the duty of Rs.47,740/-(Credit availed on inputs which was later on expired and not used in or in relation to the manufacture of finished goods) under Rule 14 of the Cenvat Credit Rules, 2004. The Cenvat Credit of duty of Rs 47,740/- appropriated the against the amount of Rs.52,301/ vide entry No. 465 of Cenvat Credit register (RG 23A part II) without any protest.

c) Ordered to recover interest at appropriate rate on the amount of duty payable as mentioned at (a) & (b) above under Section 11 AA of the CEA, 1944 read with Rule 14 (2) of Cenvat Credit Rules, 2004 on the above Central Excise duty liability;

d) Imposed a penalty of Rs.41,76.237/- (Rupees Forty One Lac Seventy Six Thousand Two Hundred Thirty Seven Only) for the period (2012-13 to 14th May,2015) under proviso to Section 11AC(l)(c)of the CEA, 1944 (erstwhile Section llAC(l)(b) of the CEA, 1944) with an option to pay reduced penalty of 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.

e) Imposed a penalty of Rs.33,62,866/- (33,22,584+40,282) (Rupees Thirty Three Lac Sixty Two Thousand Eight Hundred Sixty Six Only) for the period (May,2015 to June, 2016) under proviso to Section llAC(l)(c)of the CEA, 1944 (erstwhile Section 11AC(l)(b) of the CEA, 1944) with option to pay reduced penalty of 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.

f) Imposed a penalty **of** Rs.50,000/- (Rupees Fifty Thousand Only) on Shri Mahendrasinh Fuluba Rana, Director, of M/s. Astra Life Care (India) Pvt. Ltd. (100 % EOU), Plot No. 57/P, Sarkhej Bavla Highway, Taiuka Bavla, Ahmedabad under Rule 26 of Central Excise Rules, 2002.

7. Aggrieved with the above order, the assessee filed appeal before the Commissioner (Appeals), Central Tax, Ahmedabad who vide Order-in-Appeal No.AHM-EXCUS-002-APP-341-342-17-18 dated 24.02.2018/24.03.2018 remanded the matter back to the adjudicating authority to decide the case afresh, based on the facts available on records.

Accordingly this case was adjudicated by the then Additional Commissioner, vide OIO No.08/ADC/2019-20/MLM dated 14.11.2019 wherein he passed the following orders-

(i) Confirmed the demand amounting to Rs. 1,16,67,599/- (Rupees One Crore Sixteen Lakh Sixty Seven Thousand Five Hundred Ninety Nine Only) provisions of Section 11A(4) of the CEA, 1944. The Cenvat Credit of Rs. 1,16,67,599/- reversed by M/s. Astra Life Care (India) Pvt. Ltd is ordered to be appropriated against the demand;

(ii) Confirmed the duty of Rs.47,740/-(Credit availed on inputs which was later on

expired and not used in or in relation to the manufacture of finished goods) under Rule 14 of the Cenvat Credit Rules, 2004. The Cenvat Credit of duty of Rs 47,740/- appropriated the against the amount of Rs.52,301/ vide entry No. 465 of Cenvat Credit register (RG 23A part II) without any protest.

(iii) Ordered to recover interest at appropriate rate on the amount of duty payable as mentioned at (i) & (ii) above under Section 11 AA of the CEA, 1944 read with Rule 14 (2) of Cenvat Credit Rules, 2004 on the above Central Excise duty liability;

(iv) Imposed a penalty of Rs.41,76,237/- (Rupees Forty One Lac Seventy Six Thousand Two Hundred Thirty Seven Only) for the period (2012-13 to 14th May,2015) under proviso to Section 11AC(l)(c)of the CEA, 1944 (erstwhile Section llAC(l)(b) of the CEA, 1944) with an option to pay reduced penalty of 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.

(v) Imposed a penalty of Rs.33,62,866/-) (Rupees Thirty Three Lac Sixty Two Thousand Eight Hundred Sixty Six Only) for the period (May,2015 to June, 2016) under proviso to Section llAC(l)(c)of the CEA, 1944 (erstwhile Section HAC(l)(b) of the CEA, 1944) with option to pay reduced penalty of 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.

(vi) Imposed a penalty of Rs.50,000/- (Rupees Fifty Thousand Only) on Shri Mahendrasinh Fuluba Rana, Director, of M/s. Astra Life Care (India) Pvt. Ltd. (100 % EOU), Plot No. 57/P, Sarkhej Bavla Highway, Taiuka Bavla, Ahmedabad under Rule 26 of Central Excise Rules, 2002.

8. Aggrieved with the above order, the assessee filed appeal before the Commissioner (Appeals), Central Tax, Ahmedabad who vide Order-in-Appeal No.AHM-EXCUS-003-APP-25-26/2020-21 dated 21.09.2020 remanded the matter back to the adjudicating authority to decide the case afresh.

PERSONAL HEARING:

9. In view of Commissioner (A) OIA No. AHM-EXCUS-003-APP-25-26/2020-21 dated 21.09.2020, personal hearing was granted to the assessee on 14.09.2021 & 20.09.2021. Shri Bhavesh Jhalawadia, CA along with Ms Sneha B Mehta, CA, duly authorised representatives, appeared for the personal hearing. They have submitted a written submission along with a number of documents and requested to drop the SCN proceedings. They requested time for submission of further details and accordingly furnished further details on 08.12.2021.

DISCUSSION AND FINDINGS

10. I have carefully gone through the facts of the case, show cause notice, written submissions made in reply to the show cause notice, relevant citations submitted, directions of the Hon'ble Commissioner (Appeals) in the remand order and also submission made during the course of personal hearing held on 14.09.2021 & 20.09.2021 and 08.12.2021. On perusal of the records of the case and OIA dated 21.09.2020 passed by Com(A), I find that the instant case has been remanded back for deciding the matter afresh by considering the following points:

a) Factual verification that the said assessee have maintained records of inputs separately as prescribed under Rule 6(2)(a) and not maintained separate records for input services as prescribed under Rule 6(2)(b) and whether they are entitled to avail

option 6(3)(iii) of CCR.

b) The applicability of case law in the case of Mercedez Benz (India) P.Ltd 2015(40)STR 0381 (Tri-Mum) as the case law has been distinguished in the instant OIO overlooking the similarity of the facts of this case and referred Para 5.4 of the said order of the Hon'ble Tribunal while passing the denovo order in the first time while passing the OIA.

c) The applicability of clarification letter of F.No.334/8/2016-TRU dated 29.02.2016 in the instant case.

d) to examine the applicability of re quantification of the demand presented by the assessee during appeal procedure but kept pending for verification at the time of adjudication and

e) to verify the claim of the appellant that they have not availed any Cenvat credit on the goods received back after expiry date.

11. Before going to discuss the matter point wise, I would like to reproduce the relevant provisions of Rule 6 of Cenvat Credit Rules, 2004 for reference and details discussion. The relevant provisions of the said Rule is as under:

Rule 6 of the CCR, 2004 an obligation on the manufacturer of dutiable and exempted goods and provider of taxable and exempted services.

(1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for pro vision of exempted services, except in the circumstances mentioned in sub-rule (2).

Provided that the CENVA T credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1:- For the purpose of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for

a consideration from the factory.

Explanation 2 Value of non-excisable goods for the purpose of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under]

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for

(a) *receipt, consumption and inventory of inputs used.*

(i) *in or in relation to the manufacture of exempted goods;*

(ii) *in or in relation to the manufacture of dutiable final products excluding exempted goods;*

(iii) *for the provision of exempted services;*

(iv) *for the pro vision of output service excluding exempted services; and*

(b) *the receipt and use of input services—*

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) *in or in relation to the manufacture of dutiable final products excluding exempted goods and their clearance upto the place of removal;*

(iii) *for the provision of exempted services: and*

(iv) *for the provision of output service excluding exempted services;*

and shall take CENVA T credit only on inputs undersub clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b) I

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow anyone of the following options, as applicable to him, namely:-

(i) *pay an amount equal to six per cent of value of the exempted goods and Seven per cent of value (w.e.f.01.06.2015 as per Notification No. 14/2015 C.E/N.T. dated19.05.2015) of the exempted services; or*

(ii) *pay an amount as determined under sub-rule 3A; or*

(iii) *maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take Cenvat credit only on inputs under sub clause (ii) and (iv) of the said clause (a) and pay an amount as determined under sub-rule 3A in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:*

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i):

Provided further that if any part of value of a taxable service has been exempted on the condition that no CENVA T credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be (Seven Per cent) of value of exempted- [with effect from 01.06.2015 as per Notification No. 14/2015 CE (N. T.) dated

19.05.2015],

Provided also that In case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 Per cent of the value of exempted, [with effect from 01.06.2015 as per Notification

No. 14/2015 CE (N. T.) dated 19.05.2015],

Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the

remaining part of the financial year.

Explanation H - For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services.

Explanation III. - No CENVA T credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services]

12. An amendment to Rule 2(e) of the CCR vide Notification No.3/2011-CE (NT) dated 01.03.2011 by an explanation trading activity was included in the definition of exempted services with effect from 01.04.2011 thus w.e.f 1.04.20211, the appellant was liable to reverse the Cenvat credit availed on account of input and input services which are used for providing exempted services in terms of Rule 6(i) of CCR,2004. As per provisions of Rule 6(i), the assessee is not entitled to avail Cenvat credit in respect of input services used in trading activity. Since the input services used both in the manufacturing and trading they are liable to reverse Cenvat credit on input services attributable to trading activity i.e. exempted services. As per sub rule (3A) of CCR ,

2004, the assessee is required to intimate while exercising the option provided under Rule 6(3)(ii) to the jurisdictional superintendent and the intimation should contain the prescribed particulars specified under clause (a) of sub Rule (3A) of Rule 6 of CCR,2004.

13. On perusal of above referred documents and records available on file, I find that the said assessee is a 100% EOU engaged in the manufacture of P.P. Medicaments and also conducts trading activity of similar goods. The goods manufactured are cleared for export for which they subsequently claim refund of accumulated Cenvat credit availed on inputs & input services under Rule 5 of the CCR, 2004 read with relevant notification. The assessee contented that they also purchased similar goods from the local market for trading and accounts for such goods were kept separately. In addition to the manufacturing activities; storing and clearing of traded Pharmaceuticals products was also carried out from their factory premises as their Corporate office did not have separate storage facility.

14. The assessee was engaged in manufacture of dutiable goods and as per the provision of exempted service, they were required to maintain separate accounts for receipt of common input services as per the provisions of Rule 6(2) of Cenvat Credit Rules, 2004. A search was conducted by the Department on 20.07.2017 and it was found that they have not followed the procedure to avail credit on input services. By not following the provision of Rule 6(2) the said assessee will have to follow the options available in sub-rule(3) therein, however the assessee neither declared to the department that in addition to the manufacturing activities they were also engaged in trading activities which they carried out from their factory premises nor did they follow the procedures laid down under Rule 6(3) of Cenvat Credit Rules, 2004. The trading activity carried out by the said assessee was also not disclosed in their ER-2 return nor an intimation was submitted to the Department as required under Rule 6(3), however I find that under clause (a) of sub-rule (3A) of Rule 6, no declaration was filed to the jurisdictional Range Superintendent. In absence of any such intimation communicating their option to the department as provided under Rule 6(3)(ii) they are left with no other option but to pay an amount equal to 6% / 7% of the value of exempted services. Therefore Show Cause Notice was issued on 27.02.20217 to them to recover Cenvat credit of Rs.1,16,67,599/- and which was adjudicated by confirming the same vide OIO No.08/ADC/2017RMG dated 14.11.2017. Aggrieved with the OIO, the assessee preferred appeal before Com(A) and the Com(A) vide OIA No.AHM-EXCUS-002-APP-341-342-17-18 dated 27.02.2018 remanded back the case for fresh adjudication in light of the case law of M/s. Mercedez Benz (India) P.Ltd 2015(40)STR 0381 (Tri-Mum).

15. The adjudicating authority vide OIO No.08/ADC/2019-20/MLM dated 30.11.2019 adjudicated the Show Cause Notice by considering all the facts and case law of M/s. Mercedez Benz (India) P.Ltd 2015(40)STR 0381 (Tri-Mum) as ordered in the OIA. On perusal of the facts of the case and also the case law under reference, the adjudicating authority confirmed the demand with the following findings " *I find that SCN has already elaborated the reversal of the amount without any protest. I find that their contention that they maintain separate accounts for taxable and exempted*

goods/services separately, is clearly a well devised plan, after an after thought. It also possible that they might have generated the documents at a later date. I also find that the Director of the assessee has not retracted his statement given before a Gazetted officer of the department under Section 14 of the CE Act, 1944. Further I find that during the personnel hearing held on 10.10.2019, no additional documents substantiate their contention has been produced before me. Under the circumstances, I am unable to consider the case law in the case of M/s. Mercedez Benz (India) P.Ltd 2015(40)STR 0381 (Tri-Mum) on the basis of which the Hon'ble Commissioner (A) remanded the case". Aggrieved with the adjudication order, the assessee again approached the Com(A) and vide OIA No. AHM-EXCUS-003-APP-25-26/2020-21 dated 21.09.2020 remanded back the case for denovo proceedings with a direction to decide the case considering the following points.

a) Factual verification that the said assessee have maintained records of inputs separately as prescribed under Rule 6(2)(a) and not maintained separate records for input services as prescribed under Rule 6(2)(b) and whether they are entitled to avail option 6(3)(iii) of CCR.

b) The applicability of case law in the case of Mercedez Benz (India) P.Ltd 2015(40)STR 0381 (Tri-Mum) as the case law has been distinguished in the instant OIO overlooking the similarity of the facts of this case and referred Para 5.4 of the said order of the Hon'ble Tribunal while passing the denovo order in the first time while passing the OIA.

c) The applicability of clarification letter of F.No.334/8/2016-TRU dated 29.02.2016 in the instant case.

d) The applicability of re quantification of the demand presented by the assessee during appeal procedure but kept pending for verification at the time of adjudication and

e) to verify the claim of the appellant that they have not availed any Cenvat Cenvat credit on the goods received back after expiry date.

16. Now, in view of the above facts, I would like to discuss the matter point wise. As far as first point is concerned, while passing the OIA, the Com(A) ordered to factually verify the said assessee have maintained records of inputs separately as prescribed under Rule 6(2)(a) and not maintained separate records for input services as prescribed under Rule 6(2)(B) and whether they are entitled to avail option 6(3)(iii) of CCR. In this regard statement of Shri Mahendrasinh Fulubha Rana, Director of the said firm, was recorded on 20.07.2016 and 22.12.2016 under Section 14 of the Central Excise Act, 1944 wherein he admitted that " *On being asked, I state that our company is a 100% EOU and carrying out manufacturing as well as trading activities of pharmacutical products from our factory premises. I also admit that trading of goods is exempted service. I also state that we are not maintain separate accounts for receipt of common inout services on which Cenvat credit of service tax paid, are taken & utilized for the manufacturing of pharmaceutical products in our factory premises as well as for provision exempted service i.e.trading of goods.*" On perusal of the statement, it can be seen that the Director himself admitted that they have not maintained separate records as required under Rule 6(2) and therefore they are not eligible for any benefit of option under Rule 6(2) of CCR. As they are not eligible for the benefit of Rule 6(2) of CCR, they have to opt for any one of the options under Rule 6(3) of CCR.

17. As far as second point is concerned, I have thoroughly gone through the facts

of the case of M/s. Mercedez Benz (India) P. Ltd 2015(40) STR 0381 (Tri-Mum). In this case the appellant is a manufacturer of motor vehicle and also engaged in the trading activity of similar goods along with their same premises. They maintained common balance sheet for their manufacturing and trading activity. During the year 2011-12, they had used the input services such as advertisement services, air travel services etc for both manufacturing activity as well as trading activity and provisions of exempted services i.e. trading nor they are restricting availment of credit to the extent of input services used in the manufacture of dutiable goods. The appellant have according to the method of calculation provided vide sub rule 3A(b) of the Rule of CCR 2004 read with clause (c) read with explanation-1 provided below sub rule 3 D of the said Rule on their own accord calculated and reversed Cenvat credit and intimated the same vide letter dated 14.03.2012. Even though, SCN was issued to them alleging that they in spite of reversal of Cenvat credit along with interest but not followed the procedure as laid down in sub rule 3A(a) and (b) of the said rules respectively in as much as they had neither exercised the option nor intimating the same in writing to the Superintendent giving required particulars nor they have determined and paid the amount provisionally for every month and therefore asked to pay 5% of the value of exempted services. The said SCN was adjudicated on 16.11.2012 confirming demand of Rs.24,71,93,538/- which is equalant to 5% of the value of traded goods along with interest and penalty. In the said OIO it was confirmed the demand equalant to the 5% of the trading turnover mainly on the ground that the appellant have not complied with condition and procedure laid down under Rule 6(3)(ii) read with Rule 6(3A) of CCR, Rules. However the Hon'ble Tribunal allowed the appeal on the ground that the appellant have complied with the most of the provisions by paying the proportional credit availed with interest even at a later stage.

18. On perusal of the above facts of the case, I find that the facts are different in the instant case even though the nature of business are same. The said assessee is engaged in manufacturing of pharmaceutical products and also engaged in trading of the same. They have a common Balance sheet and are using common input services for manufacturing and trading activities. They have never maintained separate accounts for input services used for manufacturing and trading goods. A great difference in between the two cases is that in the case of M/s. Mercedez Benz (India) P. Ltd, they calculated the proportionate credit of common input services availed and reversed the proportionate Cenvat credit attributed to exempted service willingly alongwith interest himself and intimated same to the jurisdictional Superintendent of Central Excise. The intimation and reversal was an act suo moto and was not an after thought or consequential act after investigation or inquiry by the Department or any other agency. However, in the instant case, the said assessee keep availing input service credit till the preventive wing of the Department reached the place of business and started investigation in the matter. On pointing out the discrepancy by the Investigation Wing of the Department only, the said assessee agreed with the irregularity and reversed the input service tax credit without any protest. In the view of these facts, it cannot be compared the circumstances under which both the parties have reversed the cenvat credit attributable to common input services. Hence, I find

that in the case of M/s. Mercedez Benz (India) P.Ltd, the party reversed the proportionate Cenvat credit alongwith interest and intimated the calculation to the concerned Range office. Hence it can be clearly say that it was just a procedural lapse from the part of party and they themselves rectified at a later stage. But in the instant case, on perusal of the records of the case, it can be concluded that the party deliberately not paid or reversed the proportionate credit till the investigation starts. It proved beyond doubt that if the investigation wing of the Department had not acted, the wrongly availed input service credit will not have been reversed by the said assessee. On pointing out the mistake by the Preventive Wing of the Department, the said assessee agreed that they are liable to pay the same and willingly paid/reversed 6%/7% of the value of exempted services without any protest. Hence the claim of the said assessee that this is only a procedural lapse hence the same may be condoned is meritless and cannot be considered. As both circumstances and situation are entirely different as the in the former case the assessee willingly reversed the ineligible credit along with interest and intimated the Department and in the later case they have neither reversed the same suo moto nor informed the jurisdictional range office regarding the availability of Cenvat credit as prescribed in the Cenvat Credit Rules 6(3) of CCR. In view of the above, I find that the ratio of case of M/s. Mercedez Benz (India) P. Ltd, is no way applicable in this case.

19. Further, I find that one of the Director of the said assessee, Shri Mahendrasinh Fulubha Rana, in his statement dated 20.7.2016 admitted the fact that they were not maintaining separate accounts for receipt of common input services on which Cenvat credit of service tax paid was taken & utilized for manufacture of pharmaceutical products as well as for provision of exempted service. Their contention that they maintain separate accounts for trading activities and for dutiable/taxable goods/services are clearly an after-thought to mislead the Department as the officers during the search established that they do not maintain separate accounts to that effect the Director of the Company given a statement dated 20.07.2016 and subsequently reversed the amount of Rs.1,16,67,559/- and Rs.52,301/- vide entry No.464 and 465 dated 20.07.2016.

20. The third point is regarding the applicability of Board's clarification letter dated 29.02.2016 wherein it was emphasized that in any case the Cenvat credit demand should not be more the credit attributable. The applicability of this letter is relevant only when attributable credit is quantifiable from the records maintained by the said assessee However, here in this case, the assessee availed and utilized common input service credit to the tune of Rs.33,46,718/-lacs, as quantified by the said assessee, for manufacturing as well as trading goods. However as they have not maintained any separate record for the same, they could not provide the actual input service credit attributable to the input services used for trading purpose only. The assessee themselves expressed their inability to segregate the commonly availed input service credit of Rs.33,46,718/- lacs between manufacturing activity and trading activity i.e. exempted service. In the absence of segregation, the implementation of the letter is not possible as certain portion of input service have common in nature others are not.

In the absence of exact Cenvat credit attributable to exempted services, the applicability of this clarification letter will not have any implication in this case.

21. The fourth point in which the com(A) to examine the applicability of re quantification of the demand presented by the assessee during appeal procedure but kept pending for verification at the time of adjudication. The assessee vide letter dated 08.12.2021 submitted more documents such as details of trading sales (factory), trading purchase (factory), export sales, DTA sales, turnover details, excise duty availed as per RG 23 Part-II service tax credit availed as per RG 23 Part-II and re quantification statement. On perusal of re quantification statement submitted by the said assessee, I find that total value of excisable goods manufactured during the period 2012-13 to 30.06.2016 is Rs.474,90,93,396/- and trading value to the tune of Rs.18,65,49,059/-. They have quantified an amount of Rs.33,76,418/- as their common input service used in manufacture and trading activities. However they could not quantify the amount of input service tax credit utilized during the course providing exempted service i.e. trading activity. If they have provided the details of input service credit which are used exclusively for trading, the same can be allowed as eligible Cenvat credit. In the absence of the segregation, I am not in a position to identify the same and allow the Cenvat credit attributable only to input service.

22. In view of the above, I find that the demand of Rs.1,16,67,599/- in terms of rule 6(3) of the CCR, 2004 proposed to be recovered under Section 11A(4) is sustainable. The amount of Rs.1,16,67,599/- already paid through their Cenvat account without any protest needs to be appropriated against the confirmed demand along with interest.

23. As far as the non-reversal of Cenvat credit of Rs.52,301/- on time expired inputs (which were not utilized in the manufacture of their finished goods) is concerned, I find that Rule 3 of the CCR, 2004 allows Cenvat credit of duty paid on inputs/input services as the case may be, used in the manufacture of final products. The credit of duty paid on inputs which were not used in subsequent manufacturing process is not admissible. The issue has already discussed in the previous OIO and the adjudicating authority has already considered the assessee's request and reduced the amount to Rs.47,740/-. I am also of the view that the amount is payable by the assessee on that account is Rs.47,740/-.

24. Further, I find that reliance placed by the previous adjudicating authority in the case of Biopic India Corpn. Ltd. reported in 2008 (224) E.L.T. 548 (Tri. - Ahmd.) wherein Hon'ble Tribunal upheld the demand by relying on the decision of the Tribunal in the case of *Golden Polymex (India) ltd.,* (2003 (160) E.L.T. 545 (Tri.-Kolkata)) wherein it has been held that credit availed on the inputs destroyed in the fire is required to be reversed. This decision has been followed in the case of *Paras Foam Industries*, 2007 (209) E.L.T. 241 (Tri.-Delhi). In the instant case since the credit availed on such time expired inputs which were later on not used in the manufacturing process needs to be reversed along with interest. I hold that the ratio of the case would be relevant to the present case.

25. The other aspect put forward by the assessee with regard to the issue of time barred, payment of interest and penalty payable is not maintainable in the present case. The assessee has also contented that the trading activity was well within the knowledge of the department by way of visits, audit of records and activity being reflected in the P&L account, Trading account & Balance Sheet is not sustainable as the Director of the said assessee in his statement dated 20.07.2016 and 22.12.2016 admitted to the above offence and willingly reversed Rs.1,16,67,599/- and Rs.52,301/- vide entry No.464 & 465 dated 20.07.2016. I find that the assessee had not declared to the department about the fact of availing credit attributable to the trading activity. The decision of Tribunal in the case of *Tigrania Metal & Steel Industries* [2001 (132) E.L.T. 103] and of the Hon'ble High Court of Gujarat in the Neminath Fabrics case [2010 (256) ELT 369 (Guj.)] support this view. In view of the above, I find that SCN has rightly issued by invoking of extended period of time cannot be faulted at all.

26. The case laws cited by the assessee has already discussed in the previous OIO. However the said assessee relied upon case law of 2016 taxman.com 61 (Hyderabad-CESTAT) Aster P.Ltd Vs.Commissioner of C& CE, Hyderabad. On perusal of the details of the case law, I find that in this case also the appellant reversed the proportionate Cenvat credit availed on common input services, but failed to intimate the Department and subsequently SCN issued. In the present case, the said assessee reversed the credit only on persuasion by the Department hence the said case law is not applicable in this case. I find that the other case laws relied upon by the assessee cannot be applied to the present case as the nature of the case, circumstances and period involved cannot be compared to the present case and hence I hold that the said case laws are not relevant to the present case in hand.

27. In view of the above facts, I find that no option was filed with the department neither any letter communicating their activity and stating correct information was given to the department. This clearly shows that the non-disclosure of correct information was done with an intent to evade payment of duty. Further, in a case, where the Director of the Company admitted to the offence and reversed the entire amount without any protest and the adjudicating appropriated the wrongly availed Cenvat Credit against the amount demanded in the show cause notice, is not fair to reclaim by the assessee subsequently. After issue of SCN, in reply to the show cause notice, denial of the offence stating that the Director of the company had no knowledge about the activity going on in the company is clearly an act of after-thought and not suited for a reputed assessee. Further, the assessee is a 100% EOU and I find that they used to claim refund under Rule 5 of the Cenvat Credit Rules, 2004. Therefore, I find that they already got the monetary benefits. Therefore, I am of the view that the Show Cause Notice issued by the Department is correct and the assessee is liable to reverse/pay the amount demanded in the show cause along with interest and penalty under the relevant provisions of Central Excise Act, 1944 as they had neither exercised option by intimating the same in writing to the superintendent of central excise giving required particulars nor have they determined and paid any amount provisionally for every month as required.

28. Regarding imposition of penalty under Section 11AC of the CEA, 1944, I find that M/s Astra Life Care (India) Pvt. Ltd. were fully cognizant of the fact that they were not maintaining separate accounts for input services that were used in both dutiable goods and exempted services and also failed to reverse the credit on time expired destroyed inputs which they availed and intentionally suppressed this fact from the department by not intimating the above activity to the department. Suppression of material facts was manifested resulting in invocation of extended period in terms of proviso to Section 11A of the Act. Once suppression is manifested, M/s Astra Life Care (India) Pvt. Ltd. is liable to the imposition of equal penalty.

29. I find that penalty has been proposed in the show cause notice in terms of the provisions of Section 11AC 1(c) of the Central Excise Act, 1944. Section 11AC 1 (c) reads as under:-

" where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, by reason of fraud or collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined; Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty percent of the duty so determined".

30. However, in terms of Section11 AC1(e), where any duty as determined under sub-section (10) of Section 11A and the interest payable thereon under Section 11AA in respect of the transaction referred in clause (c) is paid within 30 days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period so specified.

31. I find that the Show Cause Notice has also proposed penalty under Rule 26 of the CER, 2002 on Shri. Mahendrasing Fulubha Rana, Director of M/s. Astra Life Care (India) Pvt. Ltd. I find that Shri Mahendrasingh Fulibha Rana, is responsible for overall supervision and compliance of Central Excise Law and procedure. He was aware that the assessee was carrying out trading as well as manufacturing activity and admitted the fact that they were not maintaining separate accounts as prescribed in Rule 6 of the Cenvat Credit Rules, 2004 and was also aware that they were not entitled for the benefit of Cenvat Credit of common input services. He has also agreed to their duty liabilities and reversed the disputed credit voluntarily without any protest. Being a Director, he is in-charge-and all activities are conducted under his overall supervision. Therefore, Shri Mahendrasinh Fuliba Rana has aided and abetted M/s.Astra Life Care (I) Pvt.Ltd in contravention of the provisions of Central Excise Act, 1944 and Rules made thereunder with an intent to evade payment of Central Excise duty and rendered himself liable to penal action under Rule 26 of the Central Excise

Rules, 2002. Therefore, I hold that he can not escape and absolve from the responsibilities. Therefore, I am not inclined to take a lenient view on him.

32. In view of above discussion, I hold that M/s Astra Life Care (India) Pvt. Ltd by willful suppression of facts contravened the provisions of Rule 6(3) of the CCR, 2004; failed to reverse the Cenvat credit of duty paid on inputs which later on expired and were not used in the manufacture of finished goods. They wrongly availed the Cenvat credit is required to be recovered under Rule 14 of the CCR, 2004 read with Section 11A(4) along with interest under section 11AA and penalty under Section 11AC 1 (c) of the CEA, 1944. The amount so reversed by the assessee without any protest is to be adjusted and appropriated towards the amount demanded in the show cause notice. Shri. Mahendrasing Fulubha Rana, Director of M/s. Astra Life Care (India) Pvt. Ltd , is also liable to penalty in terms of Rule 26 of the Central Excise Rules, 2002.

33. In view of the aforesaid finding, I pass the following orders.

ORDER

(i) I confirm the demand amounting to **Rs. 1,16,67,599/-** (Rupees One Crore Sixteen Lakh Sixty Seven Thousand Five Hundred Ninety Nine Only) provisions of Section 11A(4) of the CEA, 1944. The Cenvat Credit of Rs. 1,16,67,599/- reversed by M/s. Astra Life Care (India) Pvt. Ltd vide entry No.464 of Cenvat Credit register (RG 23A part II) is ordered to be adjusted and appropriated against the demand;

(ii) I confirm the demand of Rs.47,740/-(Credit availed on inputs which was later on expired and not used in or in relation to the manufacture of finished goods) under Rule 14 of the Cenvat Credit Rules, 2004. The Cenvat Credit of duty of Rs 47,740/- ordered to be adjusted and appropriated the against the amount payable by the assessee from the amount of Rs.52,301/ reversed vide entry No. 465 of Cenvat Credit register (RG 23A part II) without any protest.

(iii) I Order recovery of interest at appropriate rate on the amount of duty payable as mentioned at (i) & (ii) above under Section 11 AA of the CEA, 1944 read with Rule 14 (2) of Cenvat Credit Rules, 2004 on the above Central Excise duty liability;

(iv) I impose a penalty of **Rs.41,76,237/-** (Rupees Forty One Lac Seventy Six Thousand Two Hundred Thirty Seven Only) for the period (2012-13 to 14th May,2015) under proviso to Section 11AC(l)(c)of the CEA, 1944 (erstwhile Section llAC(l)(b) of the CEA, 1944) with an option to pay reduced penalty of 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days as discussed in para 29 above.

(v) I Impose a penalty of **Rs.33,62,866/-** (Rupees Thirty Three Lac Sixty Two Thousand Eight Hundred Sixty Six Only) for the period (May,2015 to June, 2016) under proviso to Section llAC(l)(c)of the CEA, 1944 (erstwhile Section

11AC(l)(b) of the CEA, 1944) with option to pay reduced penalty of 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days as discussed in para 29 above.

(vi) I impose a penalty of Rs.50,000/- (Rupees fifty thousand only) on Shri Mahendrasinh Fuluba Rana, Director of M/s.Astra Life Care (I) Pvt.Ltd (100% EOU), Plot No.57/P, Sarkhej Bavla Highway, Taluka Bavla, Ahmedabad under Rule 26 of the Central Excise Rules, 2002.

33. The Remand order No. AHM – EXCUS -003 – APP – 25 to 26 / 2020-21 dated 21.09.2020/09.10.2020 issued by the Commissioner (Appeals), Central Tax, Ahmedabad related to OIO No.08/ADC/2019-20 MLM dated 14.11.2017 and Show Cause Notice F.No.V.30/15-04/OA/2017 dated 27.02.2017 to M/s. Astra Life Care (India) Pvt. Ltd. (100 % EOU), Plot No. 57/P, Sarkhej Bavla Highway, Taluka- Bavla, Ahmedabad (Noticee No.l) & Shri Mahendrasinh Fuluba Rana, Director (Noticee No. 2) stands disposed of in above manner.

R. Gulzar 24/12/21

(R.GULZAR BEGUM)
Joint Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. V.30/15-195/OA/2020-DENOVO

Dated 24.12.2021

By Registered Post A.D/Hand Delivery.

To

(1) M/s.Astra Life Care (India) Pvt.Ltd (100% EOU),
Plot No.57/P, Sarkhej Bavla Highway
Taluka Bavla, Ahmedabad.

(2) Shri Mahendrasinh Fuluba Rana
Director of M/s.Astra Life Care (India) Pvt.Ltd (100% EOU),
Plot No.57/P, Sarkhej Bavla Highway
Taluka Bavla, Ahmedabad.

Copy to :

1) The Commissioner, CGST & C.Ex , Ahmedabad North.
2) The Assistant Commissioner, CGST & Central Excise, Division-V, Ahmedabad North
3) The Superintendent, CGST & Central Excise, AR-V, Division-V, Ahmedabad North.
4) The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5) Guard File: